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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Consuelo Hurtado,

No. CV-24-00342-PHX-JAT

Plaintiff,

ORDER

V.

**Commissioner of Social Security
Administration,**

Defendant.

Pending before the Court is the Commissioner of the Social Security Administration’s (“Defendant,” or “Commissioner”) Motion to Dismiss (Doc. 12), Plaintiff Consuelo Hurtado’s (“Plaintiff”) “Motion to Dismiss Current Motion to Dismiss from Defendant” (Doc. 13), and Defendant’s Reply (Doc. 14). The Court now rules.

I. MOTION TO DISMISS

Defendant argues that because Plaintiff's complaint was untimely under the provisions of the Social Security Act, it fails to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6). (Doc. 12 at 2). Plaintiff counters that Defendant has no merit to move for dismissal because Plaintiff timely filed her complaint. (Doc. 13 at 1).

A. Legal Standard

A defendant may move to dismiss a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion to dismiss, pursuant to Rule 8(a)(2), a complaint must contain “a short and plain statement

1 of the claim showing that the pleader is entitled to relief.” Further, the complaint must
 2 assert “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp v.*
 3 *Twombly*, 550 U.S. 544, 570 (2007). Through its factual content, the complaint must permit
 4 the court “to draw the reasonable inference that the defendant is liable for the misconduct
 5 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

6 In its review of a complaint for failure to state a claim, a court “must accept all well-
 7 pleaded facts as true.” *Schwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000).
 8 However, “[c]onclusory allegations and unreasonable inferences … are insufficient to
 9 defeat a motion to dismiss.” *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir. 2007). A court
 10 may also consider documents not physically attached to the pleading, provided that their
 11 “contents are alleged in a complaint” and no party questions their authenticity. *Tunac v.*
 12 *United States*, 897 F.3d 1197, 1207 n.8 (9th Cir. 2018) (quoting *Branch v. Tunnell*, 14 F.3d
 13 449, 454 (9th Cir. 1994)).

14 When “the running of the statute is apparent on the face of [a] complaint,” a court
 15 may dismiss the complaint under Rule 12(b)(6) as barred by a statute of limitations. *Von*
 16 *Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010).
 17 However, dismissal is appropriate only when a complaint’s assertions, “read with the
 18 required liberality, would not permit the plaintiff to prove that the statute was tolled.”
 19 *Morales v. City of Los Angeles*, 214 F.3d 1151, 1153 (9th Cir. 2000) (quoting *TwoRivers*
 20 *v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999)). The equitable tolling doctrine “is not generally
 21 amenable to resolution by a 12(b)(6) motion,” because its applicability “often depends on
 22 matters outside the pleadings.” *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206
 23 (9th Cir. 1995) (internal citation and quotation omitted).

24 **B. Timeliness**

25 An individual wishing to obtain a review of any final decision of the Commissioner
 26 must commence a civil action “within sixty days after the mailing to [her] of notice of such
 27 decision or *within such further time as the Commissioner of Social Security may allow.*”
 28 42 U.S.C. § 405(g) (emphasis added). This statute of limitations “must be strictly

1 construed” because it “is a condition on the waiver of sovereign immunity.” *Bowen v. City*
 2 *of New York*, 476 U.S. 467, 479 (1986). Hence, in general, a court must dismiss a claimant’s
 3 untimely complaint because it falls outside Congress’s express consent to suit. *See Kaiser*
 4 *v. Blue Cross*, 347 F.3d 1107, 1117 (9th Cir. 2003); *see also United States v. Sherwood*,
 5 312 U.S. 584, 586 (1941) (“the terms of [Congress’s] consent to be sued in any court define
 6 that court’s jurisdiction to entertain the suit”).

7 There are circumstances, however, by which a court may allow an untimely
 8 complaint to proceed. First, under Social Security Administration (“SSA”) regulations, the
 9 statute of limitations starts on the date a claimant receives notice of the Commissioner’s
 10 decision. 20 C.F.R. § 422.210(c). “[U]nless there is a reasonable showing to the contrary,”
 11 the presumed date of receipt of notice is “5 days after the date” on the notice. *Id.* As such,
 12 courts have permitted filing past the final date of the statute of limitations when claimants
 13 can show that another party’s actions prevented the notice from arriving within five days’
 14 time. A claimant, for example, may show that the SSA delayed more than five days before
 15 mailing the notice. *See, e.g., Matsibekker v. Heckler*, 738 F.2d 79, 81 (2d. Cir. 1984).
 16 However, unsupported allegations of “non-receipt within five days” are insufficient to
 17 rebut the presumption. *McLaughlin v. Astrue*, 443 F.App’x 571, 574 (1st Cir. 2011) (per
 18 curium).

19 Second, equitable estoppel and equitable tolling may halt the running of the statute
 20 of limitations. *Vernon v. Heckler*, 811 F.2d 1274, 1278 (9th Cir. 1987) (equitable estoppel);
 21 *Bowen*, 476 U.S. at 480 (equitable tolling). Equitable estoppel “focuses on the actions of
 22 the defendant,” whereas equitable tolling “focuses on the plaintiff’s excusable ignorance
 23 of the limitations period and on lack of prejudice to the defendant.” *Socop-Gonzalez v.*
 24 *I.N.S.*, 272 F.3d 1176, 1184 (9th Cir. 2001) (en banc) (internal citations and quotations
 25 omitted). Equitable estoppel applies only when the party to be estopped committed
 26 “affirmative misconduct.” *Id.* Equitable tolling requires that a plaintiff show “(1) that [s]he
 27 has been pursuing [her] right diligently, and (2) that some extraordinary circumstance stood
 28 in [her] way.” *Okafor v. United States*, 846 F.3d 337, 340 (9th Cir. 2017) (quoting *Pace v.*

1 *DiGuglielmo*, 544 U.S. 408, 418 (2005)). Extraordinary circumstances generally occur
 2 when a plaintiff was deceived into letting a deadline pass—either by a defendant’s
 3 affirmative misconduct or a court’s provision of misleading information. *See Baldwin Cty.*
 4 *Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984).

5 Here, after mistakenly mailing her complaint to the wrong address (Doc. 12-1 at
 6 31), Plaintiff requested an extension of time to file a civil action on November 7, 2023.
 7 (Doc. 12-1 at 27). In a letter dated January 12, 2024, Defendant notified Plaintiff of its
 8 decision to grant her an additional 30 days to file a civil action, stating, “[w] assume that
 9 you received this letter 5 days after the date on it unless you show us that you did not
 10 receive it within the 5-day period.” (Doc. 13 at 5–6). Thus, the Court presumes Plaintiff
 11 received the notice on January 17, 2024, at the latest. Plaintiff sent her complaint to the
 12 Arizona District Court via certified mail on February 16, 2024. (Doc. 13 at 1, 3). The Clerk
 13 of Court filed Plaintiff’s complaint and stamped it with the date of February 20, 2024, four
 14 days after the end date of the 30-day limitations period. (Doc. 1). In effect, without rebuttal
 15 of the presumption or proof of entitlement to equitable relief, the statute of limitations bars
 16 Plaintiff’s complaint.

17 Plaintiff asserts that her complaint was timely because it was mailed on February
 18 16, 2024, “which was legally the last day of submission.” (Doc. 13 at 1). Further, Plaintiff
 19 states, “Documentations are not to go by date of receiving them but by date of submitting
 20 them.” (*Id.*) However, this Court and other courts in this circuit have rejected this argument.
 21 *Squalls v. Brennan*, No. CV-19-05540-PHX-SPL, 2020 WL 4260526, *2 (D. Ariz. July
 22 24, 2020) (“The complaint is …considered to be filed as of … the date stamped on the
 23 complaint as received (as opposed to when it may have been docketed), and *not* the mailing
 24 date.”) (emphasis in original); *Cooper v. City of Ashland*, 871 F.2d 104, 105 (9th Cir. 1989)
 25 (“When papers are mailed to the clerks office, filing is complete when the papers are
 26 *received* by the clerk.”) (emphasis added); *see also In re Godfrey*, 102 B.R. 769, 771 (9th
 27 Cir. 1989) (“In a case where it is disputed exactly when the petition was placed in the
 28 possession of the clerk the file stamp gives rise to the presumption that the petition was

1 filed when it was date and time stamped by the clerk.”) Therefore, the Court finds
 2 Plaintiff’s argument to be unavailing. *Squalls*, 2020 WL 4260526, at *2 (finding the same
 3 when a *pro se* plaintiff mailed her complaint on the final day of the statute of limitations
 4 because she believed the mailing date equated to the filing date); *see also Kyle v. Campbell*
 5 *Soup Co.*, 28 F.3d 928, 931 (9th Cir. 1994) (“Excusable neglect is a flexible, equitable
 6 concept, [however,] inadvertence, ignorance of the rules, or mistakes construing the rules
 7 do not constitute excusable neglect.”).

8 Moreover, regarding entitlement to estoppel or tolling, Plaintiff has neither provided
 9 evidence of misconduct on the part of Defendant, nor evidence that any “extraordinary
 10 circumstances” occurred. (*See generally* Doc. 13). Plaintiff had notice of the course of
 11 action required to preserve her rights. Indeed, the letter that Defendant sent to Plaintiff
 12 granting her request for an extension of time notified her of the 30-day time limit, instructed
 13 her how to file a civil action, listed pertinent statutory authority, and provided her with a
 14 phone number, website, and mailing address she could contact if she had any questions or
 15 required further assistance. (Doc. 12-1 at 31–32).¹ Thus, rather than acting affirmatively to
 16 deceive Plaintiff, Defendant acted affirmatively to ensure that Plaintiff was aware of her
 17 rights and of the 30-day time limit in which she had to exercise them.

18 Therefore, there is no factual basis to support Plaintiff’s entitlement to equitable
 19 relief. Furthermore, the running of the statute of limitations is clear from the face of the
 20 complaint. Hence, the Court must dismiss the complaint as untimely. *See Squalls*, 2020
 21 WL 4260526, at *3 (quoting *Felder v. Johnson*, 204 F.3d 168, 172 (5th Cir. 2000))
 22 (“[M]ere ignorance of the law or lack of knowledge of filing deadlines does not justify
 23 equitable tolling or other exceptions to a law’s requirements.”).

24 **II. PLAINTIFF’s MOTION TO DISMISS**

25 In the Court’s view, Plaintiff’s “Motion to Dismiss Current Motion to Dismiss from
 26 Defendant” (Doc. 13) serves as a Response Brief to Defendant’s Motion to Dismiss (Doc.
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28 ¹ Claimant physically attached the January 12 letter to her complaint (Doc. 1 at 5–6). Because neither party questions its authenticity, the Court can consider it in ruling on this motion.

12).

2 **III. CONCLUSION**

3 Considering the foregoing,

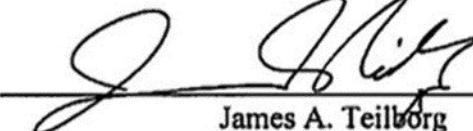
4 **IT IS ORDERED** that Defendant's Motion to Dismiss (Doc. 12) is GRANTED.

5 **IT IS FURTHER ORDERED** that Plaintiff's Complaint (Doc. 1) is DISMISSED
6 WITH PREJUDICE as untimely.

7 **IT IS FURTHER ORDERED** that Plaintiff's "Motion to Dismiss Current Motion
8 to Dismiss from Defendant" (Doc. 13) is DENIED as unnecessary.

9 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment
10 accordingly and terminate this action.

11 Dated this 12th day of December, 2024.

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16 James A. Teilborg
17 Senior United States District Judge

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